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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
FLOYD A. BARROW,)
)
Defendant.)

No. CR 07-403 (MMC)

**UNITED STATES' SENTENCING
MEMORANDUM**

The government hereby respectfully submits that the Court should sentence defendant to serve a term of imprisonment of 92 months to be followed by a term of supervised release of 3 years. The government agrees with the probation officer that neither a fine nor restitution is appropriate. This sentence would not constitute an upward departure. Rather, it is the natural consequence under the Sentencing Guidelines given defendant's clear efforts to mislead the Court as to a material issue. At a minimum, the Court should sentence defendant to 71 months.

The basis for the government's recommendation is as follows. This is the defendant's fifth adult criminal conviction. The first related to selling crack cocaine at a playground. The

1 second related to selling crack cocaine from the residence of an elderly individual. The fourth
2 related to an attack on a security guard where the defendant went for the guard's weapon. The
3 instant offense involved shots being fired and SFPD officers responding. At the time they saw
4 the defendant, he ditched the firearm into a vehicle and immediately ran from the police. When
5 he was caught, he had on gloves. While he was fortunate to have the state charges dismissed due
6 to a supposed lack of evidence, DNA evidence subsequently determined that his DNA was
7 almost absolutely part of a mixture on the firearm – only 1 in over 500,000 African-American
8 individuals could be part of the mixture. The firearm possessed by defendant Barrow was one of
9 many purchased in Arizona by former San Francisco resident Philip Farnsworth-McCorvey
10 which have surfaced in the hands of gang members in the Western Addition. Due to his gun-
11 running efforts while he resided in Arizona, for which he had “runners” from Arizona to San
12 Francisco, Mr. Farnsworth-McCorvey currently resides with the Bureau of Prisons.

13 Much is made of defendant's alleged “rehabilitation” since the commission of the instant
14 offense on July 8, 2005. Defendant also makes too much of his claims that he is not a gang
15 member. Neither of these claims appears true and neither is sufficient to put the defendant at the
16 bottom of the appropriate guideline range which should be saved for the “best of the best”
17 amongst defendants facing that range.

18 First, the defendant was arrested pursuant to a warrant based upon the Indictment in this
19 case long after Mr. Barrow had thought he had dodged these charges. At the time that the
20 warrant was executed – therefore a randomly selected window into the daily activities of Mr.
21 Barrow – the defendant was caught at the Hamilton Community Center at 1900 Geary Boulevard.
22 This is the location where the defendant was apparently coaching youngsters to play basketball,
23 for which he wants credit on his sentence. What defendant does not explain to the Court is that
24 he was caught with multiple separately wrapped baggies of marijuana, scales, \$550 cash and
25 body armor at the Community Center. The Court should treat the defendant with extreme
26 harshness for endangering any children or anyone else who might be frequenting the Center. If
27 this constitutes commendable rehabilitation, the Court will have set the bar very low indeed.

28 Finally, the defendant claims that he is not a gang member but a person who simply

1 associates with gang members. This is a false claim. Superior Court Judge Busch for the
2 Superior Court of California, City and County of San Francisco has recently issued an injunction
3 which names defendant Barrow as a member of the Knock Out Posse, a violent criminal street
4 gang in the Western Addition. *See* Exhibit A, attached hereto (Exhibit B of the Injunction lists
5 the Gang Members including defendant Floyd Barrow). This document represents a finding by
6 clear and convincing evidence that defendant Barrow is a member of a gang. Furthermore, the
7 government will be prepared to offer further video evidence of Mr. Barrow's gangster status at
8 the sentencing hearing¹. It consists of a video in which Mr. Barrow can be seen harassing a store
9 owner and yelling at the owner that he (Barrow) is not afraid because he is a "gangster."

10 The evidence demonstrates that defendant was not truthful with either the probation
11 office nor with the Court. For this reason, the government submits that the Court should find that
12 he has obstructed justice. Pursuant to the Sentencing Guidelines, §3C1.1, the Court should
13 increase his offense level by 2 levels for "providing materially false information to a probation
14 officer in respect to a presentence or other investigation for the court," Application Note 4(h),
15 and for "providing materially false information to a judge or magistrate," Application Note 4(f).
16 The further consequence of defendant's false statements is that "[c]onduct resulting in an
17 enhancement under §3C1.1 ordinarily indicates that the defendant has not accepted responsibility
18 for his criminal conduct." U.S.S.G. §3E1.1, Application Note 4. Therefore, defendant should
19 also lose the three-level acceptance of responsibility reduction. This would leave defendant with
20 an offense level of 26, with Criminal History Category IV, the appropriate sentencing range is 92
21 to 115.

22 For the foregoing reasons, the government respectfully submits that defendant should be
23 sentenced to serve a term of imprisonment of 92 months followed by 3 years of supervised
24 release. Under no circumstances should he be rewarded for his continual criminal conduct,
25 endangerment of children, and false statements by a sentence of less than 71 months
26 imprisonment.

27
28 ¹ The government is currently obtaining the video from the City Attorney's Office. It
will provide a copy to defendant as soon as it is received by the government.

DATED: December 6, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/

William Frentzen
Assistant United States Attorney